UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

EARTON LYNN SMITH   CIVIL ACTION NO. 10-1070

VERSUS   JUDGE S. MAURICE HICKS, JR.

KEVIN HUMPHREY, ET AL   MAGISTRATE JUDGE HORNSBY

<u>MEMORANDUM ORDER</u>

Before the Court is Plaintiff Earton Lynn Smith's Appeal of Magistrate Decision, (Record Document 52) wherein Magistrate Judge Hornsby denied Plaintiff's Motion to Compel. (Record Document 49).

Magistrate Judge Hornsby's November 29, 2011 Memorandum Order (Record Document 49) was a non-dispositive matter. The action taken in such order is not listed in 28 U.S.C. § 636(b)(1)(A) as one of the dispositive motions (often referred to as the "excepted motions") that a magistrate judge may not conclusively decide. Magistrate Judge Hornsby's order was not a recommendation to the district court; rather, it was an order from the magistrate judge on a non-dispositive matter than requires the district court to uphold the ruling unless it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); see also <u>Castillo v. Frank</u>, 70 F.3d 382, 385 (5th Cir. 1995) & <u>Perales v. Casillas</u>, 950 F.2d 1066, 1070 (5th Cir.1992). This Court will review Magistrate Judge Hornsby's legal conclusions *de novo,* and will review his factual findings for clear error. See <u>Choate v. State Farm Lloyds</u>, No. 03-CV-2111, 2005 WL 1109432, *1 (N.D.Tex. May 5, 2005).

This Court has reviewed the record, including Plaintiff's appeal (Record Document 52), and concludes that Magistrate Judge Hornsby's order of November 29, 2011 (Record

Document 49) was neither clearly erroneous nor contrary to law.

Accordingly,

IT IS ORDERED that Plaintiff Earton Lynn Smith's Appeal of Magistrate Decision,

(Record Document 52) be and hereby is **DISMISSED**.

IT IS FURTHER ORDERED that the Magistrate Judge's order of November 29, 2011

(Record Document 49) be and is hereby **AFFIRMED** in all respects.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 4th day of January,

2011.

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S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE